

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

INFODELI, LLC <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 4:15-cv-00364-BCW
)	
WESTERN ROBIDOUX, INC., <i>et al.</i> ,)	
)	
Defendants.)	

**MOTION AND MEMORANDUM IN SUPPORT TO CLARIFY,
OR IN THE ALTERNATIVE, FOR AN ORDER TO SHOW CAUSE
WHY CERTAIN MISSTATEMENTS ATTRIBUTED TO PLAINTIFFS'
EXPERT DR. LEVY BY DEFENDANTS IN THEIR DAUBERT REPLY
BRIEF (ECF #731) SHOULD NOT BE STRICKEN AS INCORRECT ATTRIBUTIONS**

Plaintiffs recently reviewed Defendants' Reply Suggestions in Support of Motion to Exclude Expert Testimony of Daniel Levy (ECF #731). Defendants' Reply incorrectly ascribes opinions and positions to Dr. Levy that he did not give or take, either in his Expert Report (ECF #694-2), in his Deposition testimony (ECF #694-4) or in his Rebuttal Report (ECF #694-1).

As Defendants' Reply incorrectly attributes certain positions to Dr. Levy that he did not make, Plaintiffs respectfully move to clarify the record to accurately reflect the opinions and positions Dr. Levy gave or took, or in the alternative, ask the Court for an Order requiring Defendants to show cause why the Court should not strike the misstatements from Defendants' Reply brief as factually untrue and factually unsupported.

The attached Chart, Ex. 1 hereto, details the misstatements incorrectly attributed to Dr. Levy by Defendants in their Reply (ECF #731), and cites to Dr. Levy's actual opinions or testimony in the current record. No argument is made in this motion or in the chart such that this Motion could be misconstrued as an improper surreply. Thus, Plaintiffs seek to clarify the true

nature of Dr. Levy's opinions and positions, or in the alternative, have the Court enter a show cause order to require Defendants to explain why the incorrect statements should not be stricken.

Plaintiffs' other option would be to write and serve a Rule 11 motion and serve it on opposing counsel (see, e.g., Rule 11(b)(3)), and then wait 30 days to see if Defendants agree with Plaintiffs' position that they miscited Dr. Levy's opinions and testimony, and if they do not, then file the motion. Or, Plaintiffs could hope that the Court issues a Rule 11 order *sua sponte*. See *Jenkins v. Methodist Hosps.*, 478 F.3d 255, 263 (5th Cir. 2007)). Either option is not really what Plaintiffs are looking to accomplish. Plaintiffs prefer to simply make sure that Dr. Levy's opinions and positions are correctly stated in the record, and a *Daubert* motion excluding his testimony is not granted based upon opinions he did not give or positions he did not take.

For the above reasons, Plaintiffs pray that the record be clarified or that a show cause order issue requiring Defendants to explain why the misstatements should not be stricken from Defendants' Reply (ECF #731).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2019, a true and correct copy of the foregoing was served on opposing counsel via the CM/ECF system and by email if sent to the Clerk.

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